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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAH INTERESTS V, LLC, a Texas
limited liability company;
JASON HALL, an individual,

Plaintiffs,

v.

NUTRITION 53, INC., a
California corporation;
WILLIAM ROMANOWSKI, an
individual; and DOES 1
through 10,

Defendants.

No. 2:21-cv-00173-JAM-KJN

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

Secret backroom dealings. Use of company funds to pay
personal expenditures. Preventing the IRS from reaching those
funds. These are just a few of the allegations cast against Mr.
William Romanowski ("Romanowski"), former San Francisco 49er/NFL
player and current majority shareholder, director, and public
face of Nutrition 53, Inc. ("N53"), in the present action. See
Compl., ECF No. 1. Mr. Romanowski founded N53, a nutritional and
dietary supplement company known for its Lean1 brand of protein

1 powders, vitamins, and other products. Id. ¶¶ 8-9,17. N53's
2 second largest shareholder, Jason Hall ("Hall"), and his Texas-
3 based investment company, JAH Interests V, LLC ("JAH")
4 (collectively "Plaintiffs") filed this action against N53 and
5 Romanowski ("Defendants") to enforce their contractual and
6 statutory rights in N53. Id. ¶¶ 6-7, 12. Plaintiffs assert four
7 claims: (1) breach of the 2018 Stock Purchase Agreement against
8 N53, (2) restitution due to rescission against N53, (3) breach of
9 fiduciary duty against Romanowski, and (4) violation of
10 California Corporations Code § 1601 *et seq.* against all
11 Defendants. Id. ¶¶ 21-44.

12 Before the Court are two motions to dismiss.¹ Mot. to
13 Dismiss by William Romanowski ("Romanowski Mot."), ECF No. 8;
14 Mot. to Dismiss by Nutrition 53, Inc. ("N53 Mot."), ECF No. 9.
15 Plaintiffs oppose these motions. Opp'n by JAH et al. to N53 Mot.
16 ("Opp'n to N53"), ECF No. 10; Opp'n by JAH et al. to Romanowski
17 Mot. ("Opp'n to Romanowski"), ECF No. 11. Each Defendant then
18 filed a reply. Reply by Romanowski ("Romanowski Reply"), ECF No.
19 14; Reply by N53 ("N53 Reply"), ECF No. 15.

20 For the reasons discussed below, the Court grants
21 Defendants' motions to dismiss.

22 23 I. FACTUAL ALLEGATIONS

24 On June 19, 2018, JAH and N53 entered into a Stock Purchase
25 Agreement ("SPA"). Compl. ¶ 12. Pursuant to this agreement, JAH
26

27 ¹ These motions were determined to be suitable for decision
28 without oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for April 20, 2021.

1 purchased 7,548,550 shares of N53's Series B Preferred Stock for
2 \$2,264,565.00. Id. As consideration for its purchase of stock,
3 JAH obtained the following corporate rights: (i) the right to
4 elect its own board member to sit on N53's board of directors;
5 (ii) the right to have its board member's attendance required for
6 a quorum for all board meetings and decisions; (iii) the right to
7 participate in N53's corporate governance as provided in the N53
8 Bylaws; and (iv) the "absolute right" through its elected board
9 member to access and inspect "all books, records and documents of
10 every kind" related to N53, including N53's share register,
11 corporate minutes, and accounting records. Id. ¶ 13. JAH
12 subsequently elected Hall to represent JAH on N53's board of
13 directors. Id. ¶ 15.

14 In January 2019, N53 - under Romanowski's leadership as its
15 then-CEO - entered into an "Assignment of Lean1 Bulk Product
16 Sales" with a third-party company, ProForm, to which N53 owed a
17 substantial debt. Id. ¶ 17. N53 did not first notify or discuss
18 this agreement with JAH, nor did N53 hold a board meeting prior
19 to entering the agreement. Id.

20 By July 2019, Plaintiffs had arranged a deal whereby JAH
21 would step in and pay off N53's substantial debt to ProForm
22 through an additional capital contribution to N53. Id.
23 Plaintiffs allege Romanowski interfered with the deal they'd
24 arranged by first telling ProForm that the JAH deal was no longer
25 on the table and then entering into his own "backroom deal" with
26 ProForm. Id. Plaintiffs suspect Romanowski's actions were
27 "motivated by his own self-interest in preventing the IRS from
28 gaining access to company funds that he had, up to that point,

1 been pocketing.” Id.

2 In January 2020, Romanowski removed and replaced two board
3 members without the approval of the rest of the board. Id.

4 In February 2020 at a N53 board meeting, Mr. Romanowski
5 allegedly disclosed that he “was using company funds as his own
6 personal piggy bank - including to pay for his rent and other
7 personal living expenditures.” Id. In the wake of Romanowski’s
8 disclosure that he was using company funds for his own personal
9 expenses, Plaintiffs requested access to N53’s corporate books
10 and records on more than twenty separate occasions. Id. ¶ 18.
11 N53 and Romanowski have denied Plaintiffs access. Id.

12 13 II. OPINION

14 A. Legal Standard

15 A Rule 12(b)(6) motion challenges the complaint as not
16 alleging sufficient facts to state a claim for relief. Fed. R.
17 Civ. P. 12(b)(6). “To survive a motion to dismiss [under
18 12(b)(6)], a complaint must contain sufficient factual matter,
19 accepted as true, to state a claim for relief that is plausible
20 on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
21 (internal quotation marks and citation omitted). While
22 “detailed factual allegations” are unnecessary, the complaint
23 must allege more than “[t]hreadbare recitals of the elements of
24 a cause of action, supported by mere conclusory statements.”
25 Id. “In sum, for a complaint to survive a motion to dismiss,
26 the non-conclusory ‘factual content,’ and reasonable inferences
27 from that content, must be plausibly suggestive of a claim
28 entitling the plaintiff to relief.” Moss v. U.S. Secret Serv.,

1 572 F.3d 962, 969 (9th Cir. 2009).

2 B. Analysis: Romanowski Motion

3 Defendant Romanowski moves to dismiss both claims asserted
4 against him: the third cause of action for breach of fiduciary
5 duty, see Compl. ¶¶ 33-37, and the fourth cause of action for
6 violation of California Corporations Code § 1601 *et seq.*, see id.
7 ¶¶ 38-44. Romanowski Mot. at 4-10.

8 1. Breach of Fiduciary Duty

9 JAH's third claim against Romanowski alleges he breached his
10 fiduciary duties to JAH, in particular his duty to act in good
11 faith and with inherent fairness towards JAH as a minority
12 shareholder. Compl. ¶¶ 33-37. Romanowski contends Plaintiffs
13 have not stated a claim for breach of fiduciary duty because
14 (1) they have failed to allege any breach of the fiduciary duties
15 he owed to JAH and (2) they have failed to allege any damages to
16 JAH resulting from the breach. Romanowski Mot. at 4-8;
17 Romanowski Reply at 1-4.

18 The three elements of a claim for breach of fiduciary duty
19 are: "(1) existence of a fiduciary duty; (2) breach of the
20 fiduciary duty; and (3) damage proximately caused by the breach."
21 Parrish v. NFL Players Ass'n, 534 F.Supp.2d 1081, 1097 (N.D. Cal
22 2007) (internal citations omitted); see also Shopoff & Cavallo LLP
23 v. Hyon, 167 Cal.App.4th 1489, 1509 (2008). Romanowski concedes
24 the first element is met here. Romanowski Mot. at 4; Romanowski
25 Reply at 1. He disputes, however, whether the second and third
26 elements have been sufficiently alleged. Romanowski Mot. at 4-8;
27 Romanowski Reply at 2-4.

28 As to the second element of breach, Plaintiffs' relevant

1 allegations are set forth in paragraphs 17 and 18. Compl. ¶¶ 17-
2 18; see also Opp'n to Romanowski at 4-5 (referring the Court to
3 these paragraphs). In particular, JAH highlights its allegations
4 that Romanowski interfered with the deal JAH had arranged with
5 ProForm to pay off N53's debt and then entered his own deal with
6 ProForm. Opp'n to Romanowski at 4-5. Romanowski counters that
7 these allegations do not actually explain how Romanowski breached
8 any fiduciary duty. Romanowski Reply at 2-3. The Court agrees.

9 First, JAH brings forward no caselaw supporting its
10 contention that Romanowski breached a fiduciary duty when he
11 failed to notify JAH of the transaction with ProForm before it
12 happened or that Romanowski breached a fiduciary duty by not
13 allowing JAH to buy out N53's debt with ProForm. See Opp'n to
14 Romanowski. Rather, in opposition, JAH simply concludes that
15 these actions "clearly violated Romanowski's fiduciary duties to
16 JAH" because they were "inherently unfair" and "unquestionably in
17 bad faith." Opp'n to Romanowski at 5. But in the absence of any
18 authority supporting this contention, the Court does not find
19 these allegations plausibly allege any breach of Romanowski's
20 fiduciary duty to act in good faith and with inherent fairness
21 towards JAH.

22 Second, JAH does not save its claim by arguing that the
23 "ultimate determination of whether a breach of fiduciary duty
24 occurred is a question for the trier of fact." Opp'n to
25 Romanowski at 5. In support of this argument, JAH cites to
26 Tenzer v. Superscope, Inc., 39 Cal. 3d 18 (1985), and Mueller v.
27 Macban, 62 Cal.App.3d 258 (1976). But while these cases do
28 support the general proposition that breach is ultimately a

1 question for the trier of fact, they do not bear on the question
2 presently before the Court: whether Plaintiffs have plausibly
3 alleged breach. See Iqbal, 556 U.S. at 679.

4 Finally, the Court agrees with Romanowski that Plaintiffs'
5 allegations regarding Mr. Romanowski's misuse of N53's funds, see
6 Compl. ¶ 17, cannot support a direct claim for breach of
7 fiduciary duty. Romanowski Mot. at 7-8; Romanowski Reply at 3.
8 Plaintiffs allege that in February 2020 at a N53 board meeting,
9 Mr. Romanowski disclosed that he "was using company funds as his
10 own personal piggy bank - including to pay for his rent and other
11 personal living expenditures." Id. For purposes of this Motion,
12 the Court takes these allegations as true, however, even so, the
13 Court finds these allegations support at most a claim that
14 Romanowski violated his fiduciary duty to N53 not to JAH. That
15 is, these allegations support only a derivative claim, not a
16 direct claim. Yet, only a direct claim has been asserted. See
17 Compl. ¶¶ 33-37; Opp'n to Romanowski at 6.

18 In an attempt to save its direct claim, JAH argues that an
19 exception to the general rule that minority shareholders may only
20 sue derivatively applies. Opp'n to Romanowski at 6 (citing to
21 Jones v. H. F. Ahmanson & Co., 1 Cal. 3d 93 (1969)). This
22 exception, recognized in Jones, allows a minority shareholder to
23 bring a direct claim for breach of fiduciary duty against a
24 majority shareholder where the minority shareholder's "injury is
25 not incidental to an injury to the corporation." Id. at 107.
26 However, where the alleged injury to the minority shareholder is
27 incidental to the injury to the corporation, the claim must be
28 asserted derivatively. Paclink Commc'ns Intern., Inc. v. Super.

1 Court, 90 Cal.App.4th 958, 964 (2001) (finding the Jones
2 exception did not apply where the plaintiffs' injury was
3 incidental to the company's injury). In Paclink, the California
4 Court of Appeals explained that plaintiffs are not directly
5 injured when a company is improperly deprived of assets, rather
6 that deprivation "constitutes an injury to the company itself."
7 90 Cal.App.4th at 964. Where a company is deprived of assets,
8 Plaintiffs' injury is "essentially a diminution in the value of
9 [plaintiffs'] interest . . . occasioned by the loss of the
10 company's assets," and the injury to plaintiffs is therefore
11 incidental to the injury suffered by the company. Id.

12 Here, as in Paclink, the alleged injury to JAH is clearly
13 incidental to any injury to the corporation. If Romanowski
14 misappropriated N53's funds for his own personal use, then it
15 follows that the monetary harm would be to N53, and any harm to
16 JAH as a shareholder would be merely "incidental to or an
17 indirect result of a direct injury to the corporation or to the
18 whole body of its stock or property." Pareto v. FDIC, 139 F.3d
19 696, 699 (9th Cir. 1998); see also Paclink, 90 Cal.App.4th at
20 964. JAH therefore has no direct claim for breach of fiduciary
21 claim based upon Romanowski's alleged misuse of funds.

22 Because the element of breach is required to state a breach
23 of fiduciary duty claim, this failure alone warrants dismissal of
24 Plaintiffs' third cause of action and the Court need not reach
25 the parties' additional arguments regarding the element of
26 damages. See Opp'n to Romanowski at 6-7; Romanowski Reply at 3-4.

27 The Court further finds dismissal without leave to amend is
28 appropriate. The Court need not grant leave to amend where

1 amendment would be futile. Deveraturda v. Globe Aviation Sec.
2 Servs., 454 F.3d 1043, 1049 (9th Cir. 2006). In opposition,
3 Plaintiffs had the opportunity to bring forward authority
4 supporting their contention that they plausibly alleged the
5 element of breach yet failed to do so. Further, in opposition,
6 Plaintiffs did not offer any facts that might lead the Court to
7 believe that Plaintiffs could add allegations to avoid dismissal
8 on 12(b)(6) grounds. See Opp'n to Romanowski. Accordingly, the
9 Court finds amendment would be futile.

10 2. California Corporations Code § 1601 et seq.

11 Plaintiffs' fourth claim against Romanowski alleges he
12 violated California Corporations Code § 1601 et seq. by depriving
13 JAH and Mr. Hall of their statutory right to inspect corporate
14 books and records. Compl. ¶¶ 38-44. Specifically, Plaintiffs
15 allege that Hall, as JAH's designated director, has an "absolute
16 right" to inspect all books, records, and documents "of every
17 kind" pertaining to N53 and that both N53 and Romanowski have
18 interfered with this right by denying him access on more than 20
19 separate occasions. Id. ¶¶ 18, 40-41. Romanowski moves to
20 dismiss this claim, arguing that these statutory provisions do
21 not impose any independent duties or obligations on individuals,
22 rather they set forth only the corporations' obligations to make
23 information available. Romanowski Mot. at 9-10. These
24 provisions, according to Romanowski, "expressly provide that the
25 corporation alone is responsible for furnishing the appropriate
26 documents and information." Id. at 9.

27 The provisions of the California Corporations Code at issue
28 are §§ 1601, 1602, 1604, 1605. See Cal. Corp. Code § 1601

1 (requiring that documents including "accounting books, records,
2 and minutes of proceedings of the shareholders and the board" be
3 made available "upon the written demand on the corporation of any
4 shareholder"); Cal. Corp. Code § 1602 (granting directors the
5 right to "inspect and copy all books, records and documents of
6 every kind and to inspect the physical properties of the
7 corporation"); Cal. Corp. Code § 1604 (authorizing award of
8 attorney's fees and expenses upon "failure of the corporation to
9 comply" with section 1600 or 1601); Cal. Corp. Code § 1605
10 (stating "a request for inspection is not complied with unless
11 and until the corporation at its expense makes such record
12 available in written form").

13 The parties agree these provisions impose obligations on
14 corporations to provide shareholders and directors with documents
15 and information upon request. Romanowski Mot. at 9; Opp'n to
16 Romanowski at 8. The parties, however, dispute whether these
17 provisions also impose legal obligations on individual directors
18 or shareholders such that an individual may be held personally
19 liable for violating § 1601 *et seq.* Opp'n to Romanowski at 7-9;
20 Romanowski Reply at 4-5. Romanowski argues there is no cause of
21 action against him individually under these provisions, while
22 Plaintiffs insist there is. Id.

23 As an initial matter, the Court finds the plain language of
24 these provisions supports Romanowski's position because only the
25 duties and obligations of corporate entities are expressly
26 addressed in §§ 1601, 1602, 1604, 1605. In their opposition
27 brief, Plaintiffs highlight only one reference to individual
28 "officers and agents of the corporation" in Section § 1603(b).

1 Opp'n to Romanowski at 8. Yet, as Romanowski points out,
2 Plaintiffs' selective quoting from § 1603 fails to explain how
3 the limited duties of individual officers and agents' set forth
4 in § 1603(b) - namely to comply with the demands of court
5 appointed inspectors or accountants - are triggered here.
6 Romanowski Reply at 5 n.5. The duties set forth in § 1603(b)
7 apply only where a corporation has refused lawful demand for
8 inspection and "the superior court of the proper county" steps in
9 to enforce the inspection rights. See § 1603(a) (emphasis
10 added). Only after those conditions have been met, "all officers
11 and agents of the corporation shall produce to the inspectors or
12 accountants appointed [by the superior court] all books and
13 documents in their custody or power, under penalty of punishment
14 for contempt of court." Cal. Corp. Code § 1601(b). Thus, the
15 reference to individual duties in Section §1603(b) has no bearing
16 on the present scenario, where there has been no superior court
17 order to enforce Plaintiffs' inspection rights and thus those
18 duties have not been triggered.

19 The Court finds that the plain language of the statutory
20 provisions at issue does not support Plaintiffs' position, nor
21 does the authority cited by Plaintiffs. See Opp'n to Romanowski
22 at 7-9 (citing to HIT Ent., Inc. v. Nat'l Disc. Costume Co., 552
23 F.Supp.2d 1099, 1106 (S.D. Cal. 2008); Bonfigli v. Strachan, 192
24 Cal.App.4th 1302, 1317-18 (2011); PMC, Inc. v. Kadisha, 78
25 Cal.App.4th 1368, 1381-82 (2000); Vacco Indus., Inc. v. Van Den
26 Berg, 5 Cal.App.4th 34, 53 n.20 (1992); Klein v. Oakland Raiders,
27 Ltd., 211 Cal.App.3d 67, 76-79 (1989); Valtz v. Penta Inv. Corp.,
28 139 Cal.App.3d 803 (1983)). As Romanowski points out, none of

1 these cases actually involved a violation of Corporations Code
2 § 1601, *et seq.* Romanowski Reply at 4. Rather, HIT involved
3 trademark infringement claims under the Lanham Act and California
4 law. See 552 F.Supp.2d 1099. Bonfigli involved a property
5 dispute and claims for fraud, concealment, breach of fiduciary
6 duty, trespass, and elder abuse. See 192 Cal.App.4th 1302. PMC
7 concerned claims for misappropriation of trade secrets, unfair
8 competition, and interference with prospective economic
9 advantage. See 78 Cal.App.4th 1368. Vacco similarly concerned
10 trade secrets claims. See 5 Cal.App.4th 34. Klein involved
11 antitrust claims under the Sherman Act and cross-claims for
12 interference with prospective economic advantage. See 211
13 Cal.App.3d 67.

14 Even Valtz, the case Plaintiffs rely on most heavily in
15 support of their position that Romanowski can be held personally
16 liable involved California Corporations Code § 1600, which is not
17 at issue here. See 139 Cal.App.3d 8031; see also Opp'n to
18 Romanowski at 9. Most significantly, Valtz did not address the
19 issue here, namely whether an individual may be held personally
20 liable for violating § 1601 *et seq.* Id. As such, neither Valtz
21 nor any other of Plaintiffs' cited cases clearly authorize this
22 Court to find a cause of action under § 1601 *et seq.* against an
23 individual. In the absence of such authority, the Court declines
24 to find a cause of action exists against Romanowski, particularly
25 where the plain language of the statutory provisions does not
26 support such a finding. Plaintiffs' fourth claim therefore fails
27 as a matter of law and must be dismissed.

28 Further, the Court finds dismissal without leave to amend is

1 appropriate because amendment would be futile. Deveraturda, 454
2 F.3d at 1049. In opposition, Plaintiffs had the opportunity to
3 bring forward authority supporting their position that Romanowski
4 could be held personally liable for violating § 1601 *et seq.* yet
5 failed to do so.

6 C. Analysis: N53's Motion

7 Defendant N53 moves to dismiss Plaintiffs' first and second
8 causes of action for failure to plead the legal effect of the
9 relevant provisions of the SPA. N53 Mot. at 4-5; N53 Reply at 2-
10 4. This failure, according to N53, renders these two claims
11 "fatally uncertain" and leaves N53 unable to ascertain the nature
12 of the claims against them. N53 Mot. at 1. JAH counters that it
13 has sufficiently pled the legal effect of the SPA and thus
14 adequately notified N53 of the claims against it. Opp'n to N53
15 at 3-5.

16 As an initial matter, N53 concedes that JAH was not required
17 to attach the SPA or to quote directly from the SPA in order to
18 state its two contractual claims. N53 Reply at 3; see also Opp'n
19 to N53 at 4 (collecting cases). Both parties therefore
20 acknowledge that pleading the legal effect of a contract is also
21 permissible. Id. Their dispute is whether JAH has sufficiently
22 pled the legal effect of the relevant provisions of the SPA.

23 This Court has previously explained: "A written contract may
24 be pleaded either by its terms—set out verbatim in the complaint
25 or a copy of the contract attached to the complaint and
26 incorporated therein by reference—or by its legal effect. To
27 plead a contract by its legal effect, [the plaintiff] must allege
28 the substance of its relevant terms, which is more difficult, for

1 it requires a careful analysis of the instrument,
2 comprehensiveness in statement, and avoidance of legal
3 conclusions." Wallace v. Nationstar Mortg. LLC, No. 2:18-cv-
4 02768-JAM, 2019 WL 1382499, at *2 (E.D. Cal. Mar. 27, 2019)
5 (internal quotation marks and citations omitted); see also
6 Jackson v. Farmers Ins. Exch., No. 2:12-cv-01020-WBS, 2012 WL
7 5337076 at *4 (E.D. Cal. Oct. 26, 2012) ("In order to plead a
8 contract by its legal effect, [plaintiffs] must allege the
9 substance of its relevant terms.")

10 Here, JAH insists that it has sufficiently pled the
11 substance of the relevant provisions of the SPA. Opp'n to N53 at
12 3-5. According to JAH, the legal effect of the materials terms
13 of the SPA is "plainly evident from the face of the Complaint."
14 Id. at 5. In support of this argument, JAH refers the Court to
15 paragraphs 12-15 of the complaint as adequately setting forth the
16 material terms of the SPA. Id. at 4-5. N53 argues the
17 allegations contained in those paragraphs do not satisfy the
18 applicable pleading requirements because they are not
19 comprehensive statements and do not avoid legal conclusions." N53
20 Reply at 3-4. The Court agrees. Plaintiffs have not clearly
21 alleged the substance of the SPA's relevant terms as required to
22 properly plead the legal effect of this agreement. See Wallace,
23 2019 WL 1382499, at *2. In particular, paragraph 13 of the
24 complaint pleads JAH's contractual rights and their source in a
25 conclusory and confusing manner. Compl. ¶ 13.

26 In paragraph 13, JAH cites to the SPA as the source of some
27 of its corporate rights and cites to N53's bylaws for others:
28 namely JAH's right to elect its own board member to sit on N53's

1 board of directors and its right to have that board member's
2 attendance required for a quorum for all board meetings and
3 decisions are followed by citations to provisions of the SPA,
4 while JAH's right to participate in N53's corporate governance
5 and its right to access and inspect N53's corporate records are
6 followed by citations to N53 bylaws. Id. ¶ 13. These
7 allegations leave it unclear as to whether JAH is bringing a
8 separate claim for breach of the bylaws in addition to its claim
9 for breach of the SPA. Or perhaps, as N53 suggests, paragraph 13
10 is an attempt by Plaintiffs to allege that the corporate bylaws
11 are incorporated into the SPA. N53 Reply at 5. In any case,
12 these allegations make it difficult to ascertain whether JAH is
13 alleging N53 has violated the SPA, N53's corporate bylaws, or
14 both.

15 By mixing allegations regarding the bylaws and provisions of
16 the SPA, JAH fails to carefully and comprehensively plead the
17 legal effect of the relevant provisions of the SPA as required
18 under Wallace and muddles its two claims arising under the SPA.
19 2019 WL 1382499, at *2. This failure warrants dismissal of JAH's
20 two contractual claims.² Accordingly, the first and second
21 causes of action against N53 are dismissed.

22 Since it may be possible for Plaintiffs to cure the above-
23 described deficiencies, the Court will grant them an opportunity
24 to file a First Amended Complaint.

25 ///

26 ² Because the Court dismisses on these grounds, the Court does
27 not reach the parties' additional arguments regarding breaches of
28 the implied covenant of good faith and fair dealing. See N53
Mot. at 4-5; Opp'n to N53 at 5 n.4.

1 D. Sanctions

2 A violation of the Court's standing order requires the
3 offending counsel (not the client) to pay \$50.00 per page over
4 the page limit to the Clerk of Court. Order re Filing
5 Requirements at 1, ECF No. 4-2. Moreover, the Court does not
6 consider arguments made past the page limit. Id.


7 Defendant N53's reply brief exceeds the Court's page limit
8 by 2.5 pages. See N53 Reply. N53's counsel must therefore send
9 a check payable to the Clerk for the Eastern District of
10 California for \$125.00 no later than seven days from the date of
11 this Order.

12
13 III. ORDER

14 For the reasons set forth above, the Court GRANTS Defendant
15 N53's Motion WITH LEAVE TO AMEND and GRANTS Defendant
16 Romanowski's Motion WITHOUT LEAVE TO AMEND. If Plaintiffs elect
17 to amend their complaint, they shall file a First Amended
18 Complaint within twenty days (20) of this order. Defendant N53's
19 responsive pleading is due twenty days thereafter.

20 IT IS SO ORDERED.

21 Dated: May 5, 2021

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23 
24 JOHN A. MENDEZ,
25 UNITED STATES DISTRICT JUDGE
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